HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.5461 of 2004

24-08-2005

Between:

M/s. Hastalloy India Limited,

Visakhapatnam.

…Petitioner.

And

Andhra Pradesh Industrial Infrastructure Corporation

Limited, Basheerbagh, Hyderabad and another.

…Respondents.

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ORDER :

The petitioner is a Company. On a request made by it, the A.P. Industrial Infrastructure Corporation Limited (APIIC), first respondent herein, allotted Plot Nos. A-19, A-24 and A-28 to A-33 in Industrial Development Area(IDA), Anakapalle, admeasuring 8,612 Sq.Yards at a cost of Rs.10/- per Sq.Yard. The industrial plots allotted to the petitioner appears to be the subject matter of a writ petition being W.P.No.4064 of 1981 filed by the landlords, who owned the land. The land was also the subject matter of a suit being O.S.No.47 of 1985 which was pending till 1993. According to the petitioner, in view of the orders of injunction passed by the Civil Court they could not take up the construction. Ultimately, the second respondent by letter dated 5-1-2004 cancelled the allotment and requested the petitioner to handover vacant possession of the land, aggrieved by which the present writ petition is filed.

The respondents filed a common counter affidavit denying the various allegations made by the petitioner. It is stated that the respondents allotted 8,612 Sq.Yards of land in APIE, Anakapalle industrial area at a provisional rate of Rs.10/- per Sq.Yard and an agreement was also entered into on 12-6-1982. As per the conditions of agreement, the time is the essence of the contract. But the petitioner failed to pay the balance of provisional cost in respect of which he also executed a promissory note. Subsequently, the land was measured again when it was found that the actual area is 10,416 Sq.Yards instead of 8,612 Sq.Yards allotted vide allotment order dated 2-2-1982. In spite of the request to pay the land cost for the excess area, the petitioner failed to pay the same. The petitioner paid only Rs.1,04,160/- during the period from 18-12-1981 to 16-1-1987 and failed to pay the balance land cost in spite of demand notices**,** though he agreed under the agreement to pay the balance of land cost with interest as stipulated therein. The petitioner addressed letters on
8-11-2000, 4-1-2001 and 23-7-2001 requesting the Corporation to refund the amount of Rs.1,04,160/- paid by him as he did not wish to continue to utilize the land. The petitioner, therefore, has committed breach of conditions of agreement, and therefore, after issuing notice, the allotment was cancelled.

It is further stated in the counter affidavit that the possession of industrial plots were handed over to the petitioner and the petitioner was not prevented from utilizing the land in view of the pendency of the writ petition. Though the owners of the land from whom the land was acquired by APIIC filed O.S.No.47 of 1985 on the file of the Court of Principal District Munsiff, Anakapalle, the suit was dismissed on 30-10-1992 and the appeal was also dismissed. Keeping in view the civil litigation, the second respondent by letter dated 14-9-1998 agreed to waive interest for the period from 16-9-1986 to 30-10-1992, but the petitioner did not pay the cost of the land. It is also stated that as the petitioner expressed his intention vide letters dated 8-11-2000, 4-1-2001,

23-7-2001 and 13-9-2002 not to retain the land allotted to him and sought for refund of the amount, the Corporation cancelled the allotment by impugned order informing him that his request for refund of the amount is not agreed since he has been in occupation of the land allotted to him without paying the occupation charges.

Learned counsel for the petitioner Sri Srinivasa Rao Bodduluri submits that the cancellation of the allotment when the petitioner is planning to set up an industry is illegal and arbitrary. He further submits that the impugned order passed by the second respondent is not on the ground that the petitioner requested for refund of the money, but for the reason that the petitioner has not paid the total land cost. According to the learned counsel, the petitioner has paid the entire land cost at Rs.10/- per Sq.Yard, and therefore, the impugned order suffers from non-application of mind.

The learned standing counsel for APIIC Sri E.Madan Mohan Rao has produced the original file from the office of the second respondent and after taking this Court through the correspondence between the petitioner and the second respondent submits that the allotment was cancelled for breach of agreement in not paying the amount within the stipulated time and also considering the request of the petitioner not to retain the land and for refund of the money.

The factual position is not much in dispute. The petitioner was initially allotted 8,612 Sq.Yards and on physical verification it was found the actual area allotted to the petitioner was 10,416 Sq.Yards. The record discloses that the petitioner has paid a sum of Rs.1,04,160/- but did not pay any amount for the excess area over and above 8,612 Sq.Yards. Number of notices were issued in that direction in vain. Be that as it is, it is also not disputed that there was a litigation with regard to the same land initiated by the owners of the land in this Court as well as before the Civil Court till 1993. Thereafter nothing prevented the petitioner. Though he was given the physical possession to develop the land he did not do so. Apart from this, the file produced before this Court discloses that he himself requested for refund of the amount impliedly asking for cancellation of the allotment. The impugned order refers to two letters dated 23-7-2001 and 13-9-2002 admittedly written by the petitioner. The letter dated 23-7-2001 found at page No.125 of the file of the second respondent addressed by the Managing Director of the petitioner Company to the Deputy Zonal Manager of APIIC, Visakhapatnam reads as under.

> “Please refer our letters under reference and other correspondence on the subject resting with you and regret to inform you that we have neither received your reply nor the refund of the amount of Rs.1,04,106/- along with interest @ 21% per annum as applicable. As such you have failed in registering the subject plots in our favour and all our attempts in that direction were in vain. Hence, we requested you to refund the amount paid along with interest @ 21% vide our letters cited above alternatively.

We have no other alternative except to seek the legal protection redressed."

In response to the above letter, the second respondent addressed a letter dated 4-2-2002/1-3-2002 to the petitioner informing that it is not possible for the Corporation to consider the request for refund of the amount paid by the petitioner as part payment towards the cost of the plots allotted to the petitioner, as he has taken possession of the land and enjoying the same. The petitioner was also requested to arrange the payment of Rs.38,660/- towards principal and Rs.64,426-10 towards interest as on 31-1-2002. This was sent to the petitioner Company by registered post acknowledgement due, but the Postal authorities returned the same to the sender with an endorsement that there is no such address with the Door Number. Accordingly the original letter was again sent to Visakhapatnam address. The petitioner, however, did not send any reply. The petitioner again addressed a letter on 13-9-2002 to the second respondent found at page No.105 of the file, which reads as under.

"We drew your kind attention to the above correspondence wherein we have been requesting you to register the sale deed in view of non-giving of physical possession by you to us right from day one of agreement. As such, the land lords have been claiming possession since the beginning. In fact, at our cost, we have gone through the legal proceedings and got a favourable order and requested you to register the sale deed at once. You failed to do so. As a routine today again landlords occupied the premises and threatened our employees for dire consequences for their entry. A copy of the complaint given to Anakapalle Police station is already sent to your Zonal Manager Visakhapatnam today, the 13th Sep'02.

Hence under these circumstances, we have no other alternative than to demand refund of our amount of Rs.1,04,106/- along with interest @ 12% per annum. This was already stated in all our letters including those dated 18-10-2000 and 23-7-2001.

If we do not get any positive response from you, it is understood that you are forcing us to seek legal redressal."

After considering the above letter and also the conduct of the petitioner Company in not implementing the scheme, the second respondent issued the impugned letter dated 5-1-2004 cancelling the allotment.

The fact that the petitioner was allotted industrial plots in February, 2002 cannot be denied. Though admittedly there was a litigation in relation to the industrial plots till 1993, the petitioner did not take any steps for implementation of the scheme for manufacturing of Alloy Castings. The petitioner also did not pay the amount towards the land, which was found in excess. However, in 2001 alleging that the land owners did not allow the petitioner to enter the land, the petitioner itself requested for cancellation of the land. Considering this aspect and also the fact that there is breach of conditions of the agreement, the second respondent issued the impugned

letter cancelling the allotment. This action of the respondents does not in any manner suffer from the vice of illegality or arbitrariness.

In **Indu Kakkar v. Haryana State I.D.C. Limited** the question arose whether a covenant in the agreement between the Corporation and the allottee enabling the Corporation to cancel the allotment is a valid condition. Having noticed the fact that the allottee did not take any steps towards implementation of the proposed industrial unit, the Supreme Court laid down as under.

> "All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest." If the condition is invalid it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the Agreement between the parties, is therefore, valid and is binding on the parties thereto.'

Yet again, it was held

> "Here the agreement was entered into between the Corporation and the allottee as a sequel to the request made by the allottee to give him an industrial plot for the purpose of setting up an industry. Corporation reciprocated to the request on being satisfied that the allottee was able to carry out the obligations so as to accomplish the purpose of allotment. The assurance given by of the allottee that he shall start construction of the building for setting up the industry within a period of six months and complete the construction thereof within two years from the date of issue of allotment letter was verified and found acceptable to the Corporation and then only the Corporation has chosen to enter into the agreement with the allottee. It is a matter of confidence which the Corporation acquired in the promise made by the allottee that the latter would perform such obligations. If the allottee evacuates from the scene after inducting someone else into the plot without consent of the Corporation it is not legally permissible for the inductee to compel the Corporation to recognize him as the allottee."

Applying the ratio in the above judgment, this Court finds that there is no merit in the writ petition. The writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J.)

24-08-2005

Msr.

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(Msr)